

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

JOSEPH ROTELLO and NINA ROTELLO,)	
)	
Plaintiffs,)	
)	
v.)	No.: 3:03-CV-573
)	(VARLAN/SHIRLEY)
CLAYTON HOMES OF DELAWARE, INC.,)	
BERKSHIRE HATHAWAY, INC.,)	
CMH SERVICES, INC., CMH)	
MANUFACTURING, INC., CMH HOMES,)	
INC., CMH INSURANCE AGENCY, INC.,)	
and GEORGE SNYDER,)	
)	
Defendants.)	

ORDER

On January 8, 2007, this Court held a hearing in which it issued a ruling in response to the oral argument of the parties on January 3, 2007 concerning two pending motions: (1) the Motion to Dismiss [Doc. 117] filed by defendants Clayton Homes of Delaware, Inc., Berkshire Hathaway, Inc., CMH Services, Inc., CMH Manufacturing, Inc., CMH Homes, Inc., and CMH Insurance Agency, Inc. (“corporate defendants”); and (2) the Motion for Summary Judgment [Doc. 121] filed by corporate defendants. For the reasons set forth at that hearing, the Court finds as follows:

(1) Corporate defendants’ Motion to Dismiss [Doc. 117] is **GRANTED in part** and plaintiffs’ claim of fraud and all of plaintiffs’ claims against corporate defendants CMH Services, Inc., CMH Insurance Agency, Inc., and Berkshire Hathaway, Inc. are **dismissed**

with prejudice. However, because plaintiffs' amended complaint does state a claim upon which relief can be granted as to their claims for breach of contract, breach of express warranty, breach of implied warranties, breach of the Magnuson-Moss Warranty Act, breach of the Tennessee Consumer Protection Act, civil conspiracy, negligence, strict liability, and punitive damages alleged against corporate defendants Clayton Homes of Delaware, Inc., CMH Homes, Inc., and CMH Manufacturing, Inc., corporate defendants' Motion to Dismiss is **DENIED in part.**

(2) Corporate defendants' Motion for Summary Judgment [Doc. 121] is **GRANTED in part** and corporate defendants are entitled to judgment as a matter of law as to plaintiffs' claims of breach of the implied warranties of merchantability, habitability and fitness for a particular purpose, civil conspiracy, and all of plaintiffs' claims against corporate defendant Clayton Homes of Delaware, Inc. However, because the Court finds that there are genuine issues of material fact remaining, plaintiffs' claims for breach of contract, breach of express warranty, breach of the Magnuson-Moss Warranty Act, breach of the Tennessee Consumer Protection Act, negligence, strict liability, and punitive damages alleged against defendants CMH Homes, Inc. and CMH Manufacturing, Inc. remain in this case and corporate defendants' Motion for Summary Judgment is accordingly **DENIED in part** as to those claims.

IT IS SO ORDERED.

s/ Thomas A. Varlan

UNITED STATES DISTRICT JUDGE